

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1402

Introduced by Senator Dutton

**(Coauthors: Senators Calderon, Cogdill, Correa, Cox, Denham,
Hollingsworth, ~~and Huff~~ Huff, and Wright)**

(Coauthor: Assembly Member Smyth)

February 19, 2010

An act to amend Sections 43008.6, 43016, 43020, 43023, 43154, 43211, and 43212 of, to amend and renumber Section 43031 of, to add Sections 39619.7, 42413, and 43024.5 to, and to repeal Section 43031.5 of, the Health and Safety Code, relating to air pollution, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as amended, Dutton. State Air Resources Board: administrative and civil penalties.

~~Existing~~

(1) *Existing* law subjects violators of air pollution laws to specified civil and administrative penalties. Existing law imposes various duties on the State Air Resources Board relative to the reduction of air pollution.

This bill would require a communication, whether written or oral, from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, to contain specified information. The bill would require this information and final mutual settlement agreements reached between the state board and a person alleged to have violated air pollution laws to be made available to the public.

The bill would require the state board to prepare and submit to the Legislature and the Governor a report summarizing the motor vehicle pollution administrative penalties imposed by the state board for calendar year 2011, and annually thereafter, and would require the state board to adopt and submit to the Legislature a written penalty policy for motor vehicle pollution laws that is based on specified criteria.

This bill would entitle a person alleged to have violated motor vehicle pollution laws *to* the right to an administrative hearing pursuant to existing provisions of law, at the person's request, in lieu of a civil action. It would increase the maximum amount of an administrative penalty imposed pursuant to specified provisions of law per penalty assessment proceeding for any violation arising from the same conduct from \$100,000 to \$300,000, and would require specified administrative and civil penalties, including proceeds of mutual settlement agreements, *to* be deposited in the General Fund.

The bill would provide that a person would not be liable under more than one civil, administrative, or criminal penalty provision of motor vehicle pollution law for any violation arising from the same conduct, and would prohibit the state board from assessing penalties against multiple persons for the production or sale of the same vehicle or units under motor vehicle pollution law provisions.

This bill, in addition, would provide that any person who fails to obtain a new certification for an engine family certified in the previous model year and sold in the same configuration in the model year for which the failure to obtain new certification was made would be liable for a civil penalty not to exceed \$10,000 per engine family for which the person failed to obtain certification, rather than per vehicle. *The bill would subject specified violations for transactions involving uncertified vehicles to a cumulative civil penalty not to exceed \$5,000 per vehicle, regardless of the number of violations or violators with respect to that vehicle.*

(2) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 39619.7 is added to the Health and Safety
- 2 Code, to read:

1 39619.7. (a) A communication, whether written or oral, from
2 the state board alleging that an administrative or civil penalty will
3 be, or could be, imposed either by the state board or another party,
4 including the Attorney General, for a violation of air pollution law,
5 shall contain a clear explanation of both of the following:

6 (1) The manner in which the administrative or civil penalty
7 amount was determined, including the aggravating and mitigating
8 factors the state board considered in arriving at the amount, and,
9 where applicable, the per unit or per vehicle basis for the penalty.

10 (2) Whether there were direct pollution emissions in excess of
11 legal requirements resulting from the violation, and if there were,
12 a quantification of the specific amount of pollution emitted in
13 excess of the requirements.

14 (3) The provision of law or regulations under which the alleged
15 violator is being assessed the administrative or civil penalty,
16 including the reason that provision is most appropriate for that
17 violation.

18 (b) The information described in subdivision (a) and all final
19 mutual settlement agreements reached between the state board and
20 a person alleged to have violated air pollution laws shall be made
21 available to the public.

22 SEC. 2. Section 42413 is added to the Health and Safety Code,
23 to read:

24 42413. All penalties collected by the state board pursuant to
25 Part 1 (commencing with Section 39000) to Part 4 (commencing
26 with Section 41500), inclusive, including proceeds from mutual
27 settlement agreements, shall be deposited in the General Fund.

28 SEC. 3. Section 43008.6 of the Health and Safety Code is
29 amended to read:

30 43008.6. (a) Notwithstanding Section 43012, for the purpose
31 of enforcing or administering Section 27156 of the Vehicle Code,
32 the executive officer of the state board or an authorized
33 representative of the executive officer, upon presentation of
34 credentials or, if necessary under the circumstances, after obtaining
35 a warrant pursuant to Title 13 (commencing with Section 1822.50)
36 of Part 3 of the Code of Civil Procedure, has the right of entry to
37 any premises owned, operated, used, leased, or rented by an owner
38 or operator of any vehicle operated for commercial purposes in
39 order to inspect any such motor vehicle, secure emission samples

1 therefrom, or inspect and copy any maintenance, use, or other
2 records pertaining to that vehicle.

3 (b) The state board may collect a civil penalty not to exceed
4 one thousand five hundred dollars (\$1,500) for each violation of
5 Section 27156 of the Vehicle Code. Any penalties shall be paid to
6 the Treasurer for deposit in the General Fund.

7 (c) The civil penalty specified in subdivision (b) may be
8 collected for one or more violations involving the tampering with
9 or disabling of a gasoline-powered vehicle's air injection, exhaust
10 gas recirculation, crankcase ventilation, fuel injection, carburetion,
11 ignition timing, or evaporative control system, fuel filler neck
12 restrictor, oxygen sensor or related electronic controls, or catalytic
13 converter, or for the use of leaded fuel in a vehicle certified for
14 the use of unleaded fuel only.

15 (d) The civil penalty specified in subdivision (b) may not be
16 collected for a violation that is related to any tampering or disabling
17 of a gasoline-powered vehicle specified in subdivision (c) by a
18 rental customer of that vehicle, including, but not limited to, a
19 missing gasoline filler cap and a disconnected or missing heated
20 air intake tube or vacuum hose. However, if more than 20 percent
21 of an owner's or operator's gasoline-powered vehicles are found
22 to be nonconforming during each of three consecutive inspections
23 conducted 30 or more days apart during any one-year period, the
24 civil penalty specified in subdivision (b) applies and shall be
25 collected for each time a vehicle is found in a nonconforming
26 condition.

27 SEC. 4. Section 43016 of the Health and Safety Code is
28 amended to read:

29 43016. Any person who violates any provision of this part, or
30 any order, rule, or regulation of the state board adopted pursuant
31 to this part, and for which violation there is not provided in this
32 part any other specific civil penalty or fine, shall be subject to a
33 civil penalty not to exceed five hundred dollars (\$500) per vehicle,
34 portable fuel container, spout, engine, or other unit subject to
35 regulation under this part, as these terms are defined in this division
36 or state board regulations.

37 SEC. 5. Section 43020 of the Health and Safety Code is
38 amended to read:

39 43020. (a) Any person who knowingly violates any regulation
40 adopted pursuant to this part by the state board pertaining to motor

1 vehicle fuels is guilty of a misdemeanor and is subject to a fine of
2 not more than one thousand dollars (\$1,000) or imprisonment in
3 the county jail for not more than six months, or both, for each
4 violation.

5 (b) The recovery of civil penalties pursuant to this part precludes
6 prosecution pursuant to this section for the same offense. When
7 the executive officer refers a violation to a prosecuting attorney,
8 the filing of a criminal complaint is grounds requiring the dismissal
9 of any civil action brought pursuant to this part for the same
10 offense.

11 SEC. 6. Section 43023 of the Health and Safety Code is
12 amended to read:

13 43023. (a) (1) As an alternative to seeking civil penalties
14 under Chapter 1 (commencing with Section 43000) to Chapter 4
15 (commencing with Section 43800), inclusive, and Chapter 6
16 (commencing with Section 44200), for violation of state board
17 regulations, the state board may impose an administrative penalty,
18 as specified in this section, for a violation of this part, or any rule,
19 regulation, permit, variance, or order of the state board pertaining
20 to vehicular air pollution control except as otherwise provided in
21 this division. No administrative penalty imposed pursuant to this
22 section shall exceed the amount that the state board is authorized
23 to seek as a civil penalty for the applicable violation, and no
24 administrative penalty imposed pursuant to this section shall exceed
25 ten thousand dollars (\$10,000) for each day in which there is a
26 violation up to a maximum of three hundred thousand dollars
27 (\$300,000) per penalty assessment proceeding for any violation
28 arising from the same conduct. This three hundred thousand dollar
29 (\$300,000) maximum penalty limitation does not apply in any
30 judicial proceeding involving violations committed under this part.

31 (2) A person alleged to have violated this part is entitled to an
32 administrative hearing pursuant to this section, at the person's
33 request, in lieu of a civil action.

34 (b) Nothing in this section restricts the authority of the state
35 board to negotiate mutual settlements under any other penalty
36 provision of law that exceeds ten thousand dollars (\$10,000) for
37 each day in which there is a violation up to a maximum of three
38 hundred thousand dollars (\$300,000) per penalty assessment
39 proceeding.

(c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, except that the hearings shall be conducted by an administrative law judge appointed by the Office of Administrative Hearings *from the General Jurisdiction Division*.

(d) Nothing in this section authorizes the state board to impose penalties for categories of violations for which the state board may not seek penalties in a civil action.

(e) If the state board imposes any administrative penalties pursuant to this section, the state board may not bring any action pursuant to, or rely upon, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

(f) After an order imposing an administrative penalty becomes final pursuant to the hearing procedures identified in subdivision (c), and no petition for a writ of mandate has been filed within the time allotted for seeking judicial review of the order, the state board may apply to the Superior Court for the County of Sacramento for a judgment in the amount of the administrative penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

(g) This section does not apply to any violation for which a penalty may be assessed pursuant to Chapter 1.5 (commencing with Section 43025), except that a person alleged to have violated Chapter 1.5 (commencing with Section 43025) is entitled to an administrative hearing, in lieu of a civil action.

(h) This section is not intended, and shall not be construed, to grant the state board authority to assess an administrative penalty for any category of violation that was not subject to enforcement by the state board as of January 1, 2002.

(i) Any administrative penalty assessed pursuant to this section shall be paid to the Treasurer for deposit in the General Fund.

(j) A party adversely affected by the final decision in the administrative hearing may seek independent judicial review by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.

1 (k) This section applies only to violations that occur on or after
2 January 1, 2002.

3 (l) The state board shall prepare and submit to the Legislature
4 and the Governor a report summarizing the administrative penalties
5 imposed by the state board pursuant to this section for calendar
6 year 2011, and annually thereafter.

7 SEC. 7. Section 43024.5 is added to the Health and Safety
8 Code, to read:

9 43024.5. (a) A person shall not be liable under more than one
10 civil, administrative, or criminal penalty provision of Chapter 1
11 (commencing with Section 43000) to Chapter 4 (commencing with
12 Section 43800), inclusive, and Chapter 6 (commencing with
13 Section 44200) for any violation arising from the same conduct.

14 (b) The state board shall not assess penalties against multiple
15 persons for the production or sale of the same vehicle or units
16 under the provisions of law described in subdivision (a). The state
17 board shall impose penalties only on the person the state board
18 determines to be most responsible for the violation.

19 SEC. 8. Section 43031 of the Health and Safety Code is
20 amended and renumbered to read:

21 43024. (a) The civil or administrative civil penalties prescribed
22 under Chapter 1 (commencing with Section 43000) to Chapter 4
23 (commencing with Section 43800), inclusive, and Chapter 6
24 (commencing with Section 44200) shall be assessed and recovered
25 either in a civil action brought in the name of the people of the
26 State of California by the Attorney General or by the state board,
27 or in administrative hearings established pursuant to regulations
28 adopted by the state board.

29 (b) In determining the amount assessed, the court, the Attorney
30 General, or the state board, in reaching any settlement, shall act
31 pursuant to the official written policy described in subdivision (c)
32 that takes into consideration all relevant circumstances, including,
33 but not limited to, all of the following:

34 (1) The extent of harm to public health, safety, and welfare
35 caused by the violation.

36 (2) The nature and persistence of the violation, including the
37 magnitude of the excess emissions.

38 (3) The compliance history of the defendant, including the
39 frequency of past violations.

1 (4) The preventive efforts taken by the defendant, including the
2 record of maintenance and any program to ensure compliance.

3 (5) The innovative nature and the magnitude of the effort
4 required to comply, and the accuracy, reproducibility, and
5 repeatability of the available test methods.

6 (6) The efforts to attain, or provide for, compliance.

7 (7) The cooperation of the defendant during the course of the
8 investigation and any action taken by the defendant, including the
9 nature, extent, and time of response of any action taken to mitigate
10 the violation.

11 (8) For a person who owns a single retail service station, the
12 size of the business, for violations under Chapter 1.5 (commencing
13 with Section 43025).

14 (c) No later than March 1, 2011, the state board shall adopt and
15 submit to the Legislature a written penalty policy that is based on
16 the criteria in subdivision (b) and that is modeled on the United
17 States Environmental Protection Agency's 2009 Clean Air Act
18 Mobile Source Civil Penalty Policy for Vehicle and Engine
19 Certification Requirements.

20 (d) All administrative and civil penalties collected under Chapter
21 1 (commencing with Section 43000) to Chapter 4 (commencing
22 with Section 43800), inclusive, and Chapter 6 (commencing with
23 Section 44200), including proceeds from mutual settlement
24 agreements, shall be deposited in the General Fund.

25 SEC. 9. Section 43031.5 of the Health and Safety Code is
26 repealed.

27 SEC. 10. Section 43154 of the Health and Safety Code is
28 amended to read:

29 43154. (a) ~~Any person who violates any provision of this~~
30 ~~article shall be liable for a civil penalty not to exceed five thousand~~
31 ~~dollars (\$5,000) per vehicle, except that any~~ (1) *Except as*
32 *otherwise provided in paragraph (2), violations of this article and*
33 *Section 43211 are subject to a cumulative civil penalty not to*
34 *exceed five thousand dollars (\$5,000) per vehicle, regardless of*
35 *the number of violations or violators with respect to that vehicle.*

36 (2) *Any person who fails to obtain a new certification for an*
37 *engine family certified in the previous model year and sold in the*
38 *same configuration in the model year for which the failure to obtain*
39 *new certification was made shall be liable for a civil penalty not*
40 *to exceed ten thousand dollars (\$10,000) per engine family for*

1 which the person failed to obtain certification, rather than per
2 vehicle.

3 (b) Any action to recover a penalty under this section shall be
4 brought in the name of the people of the State of California in the
5 superior court of the county where the violation occurred, or in
6 the county where the defendant's residence or principal place of
7 business is located, by the Attorney General on behalf of the state
8 board, in which event all penalties adjudged by the court shall be
9 deposited in the General Fund, or by the district attorney or county
10 attorney of such county, or by the city attorney of a city in that
11 county, in which event all penalties adjudged by the court shall be
12 deposited with the treasurer of the county or city, as the case may
13 be.

14 *SEC. 11. Section 43211 of the Health and Safety Code is*
15 *amended to read:*

16 43211. ~~No~~A new motor vehicle shall *not* be sold in California
17 that does not meet the emission standards adopted by the state
18 board, and any manufacturer who sells, attempts to sell, or causes
19 to be offered for sale a new motor vehicle that fails to meet the
20 applicable emission standards shall be subject to a *cumulative* civil
21 penalty of five thousand dollars (\$5,000) ~~for each such action per~~
22 *vehicle, regardless of the number of violations or violators with*
23 *respect to that vehicle.*

24 Any penalty recovered pursuant to this section shall be deposited
25 into the General Fund.

26 ~~SEC. 11.~~

27 *SEC. 12. Section 43212 of the Health and Safety Code is*
28 *amended to read:*

29 43212. Any manufacturer or distributor who does not comply
30 with the emission standards or the test procedures adopted by the
31 state board shall be subject to a civil penalty of fifty dollars (\$50)
32 for each vehicle which does not comply with the standards or
33 procedures and which is first sold in this state. The payment of
34 those penalties to the state board shall be a condition to the further
35 sale by that manufacturer or distributor of motor vehicles in this
36 state.

37 *SEC. 13. This act is an urgency statute necessary for the*
38 *immediate preservation of the public peace, health, or safety within*
39 *the meaning of Article IV of the Constitution and shall go into*
40 *immediate effect. The facts constituting the necessity are:*

- 1 *In order that air pollution penalties are imposed in furtherance*
- 2 *of state goals as quickly as possible, it is necessary that this act*
- 3 *take effect immediately.*